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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,272	02/06/2004	Christoph Andreas Roth	008932-0876-999	8488
51832	7590	05/11/2006	EXAMINER	
JONES DAY			SWIGER III, JAMES L	
222 EAST 41ST STREET			ART UNIT	
NEW YORK, NY 10017-6702			PAPER NUMBER	

3733

DATE MAILED: 05/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/774,272	ROTH ET AL.	
	Examiner	Art Unit	
	James L. Swiger	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-33 is/are rejected.
- 7) ☒ Claim(s) 18 and 34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments, see amendment, filed 2/23/2006, with respect to the rejection based on Asher et al. '993 have been fully considered and are persuasive. The rejection of claims 1-4, 6, 9, 10-12, 13-19, 20-22, and 30-32 have been withdrawn.

Applicant's arguments, see amendment, filed 2/23/2006, with respect to the rejection of claims 18 and 34 of Fujiwara '477 have been fully considered and are persuasive. The rejection of claims 18 and 34 have been withdrawn.

Applicant's arguments filed in the amendment on 2/23/2006 have been fully considered but they are not persuasive. With regards to the argument on the Fujiwara reference, Fujiwara '477 still discloses a first implant (16) and a second implant (32), and also still has at least one prong. Also the second implant also is capable of forming a longitudinal axis that likewise has the capability of a sliding movement. Sliding must occur at one point in the device's setup to arrange it as needed, even if it is when sliding the second implant through the first implant in preparation for it to be secure.

Allowable Subject Matter

Claims 18 and 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3733

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9,13-17 and 23-29, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Fujiwara (U.S. Patent No. 6,406,477). For claims 1-9,13-18, Fujiwara discloses a device having a mechanism (See Fig. 2 below).

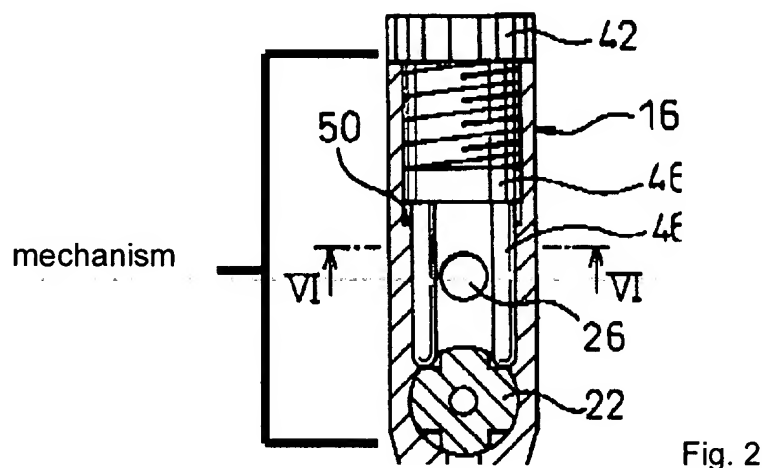
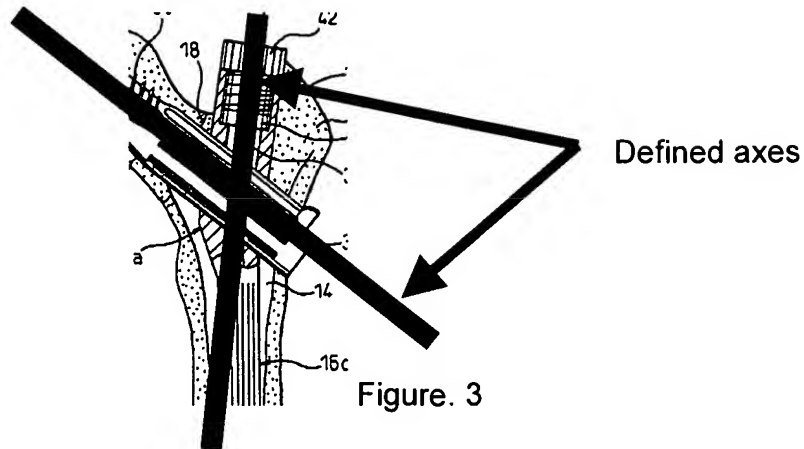


Fig. 2

Fujiwara also discloses a device having a body member (46a), a first implant (16), a second implant (32), a single prong (46), drive member (40), a first and second engagement surface (Fig. 2), a longitudinal channel (16b), stops (34), a bore (26), a predetermined angle with the first longitudinal axis (see Fig. 3 below), a drive member (42) that is rotatable and threadably engages the first implant, and has an end cap (top section of 42).



The device of Fujiwara anticipates the device further. For claims 23-29, 33-34, the reference '477 teaches a body member, a first and second prong (Fig. 4), and a drive member (40). The first and second prongs are substantially parallel, the second prong is substantially zero in length, and both substantially prevent the rotation and/or sliding of the second implant. The word "substantially" functions as an indefinite term in this situation, and is examined in the broadest reasonable interpretation. The mechanism also extends through a bore in the first implant at the intersection of the axes in Fig. 3, and an end cap (top of 42).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

Art Unit: 3733


extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 8:30am to 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JLS

 5/4/06


EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER